IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2002 of 1997
To
FIRST APPEAL No. 2015 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI PARBHATBHAI - Appellant(s)
Versus
SPECIAL LAND ACQUISITON OFFICER & 2 - Defendant(s)

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Appearance :
MR PR THAKKAR for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 17/04/2007

ORAL JUDGMENT

1. All the appeals arise for enhancement of the amount of compensation against the Judgment and Award passed by the Reference Court dated 22.06.1992, whereby the Reference Court has additionally awarded the compensation at Rs.17,500/- per hectare(Rs.1.75 Ps.) together with the additional amount and interest @ 12% p.a. and solatium at 30% and the interest @ 9% for the first year and 15% for the remaining year.

2. The short facts of the case appear to be that the proposal was moved for acquisition of the land at Village Kanjat for Narmada Project. The Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as “the Act”) was published on 09.08.1984. Thereafter, ultimately the Award came to be published on 30.04.1986, whereby the Land Acquisition Officer awarded the compensation @ Rs.13,000/- per hectare (Rs. 1.30ps. per sq. mtr.) for irrigated land and Rs. 85000/-(Rs. 0.85 ps.)for non-irrigated land. The land owners/claimants were not satisfied with the compensation awarded by the Special Land Acquisition Officer and therefore, the disputes were raised, which came to be referred to the Reference Court for adjudication. The Reference Court ultimately found that the claimants are entitled to the additional compensation of Rs.1.75ps. per sq.

mtr. together with the other statutory benefits as per the scheme of the Act on the aspects of increase in the amount, solatium and interest. It is under these circumstances, the present appeals are preferred by the claimants for enhancement of the amount of compensation.

3. Heard Mr. Thakkar, learned counsel for the appellants and Mr. Chhaya, learned AGP for the State. It appears that the land under acquisition is falling under the revenue limits of village Kanjat and for the very village, vide notification dated 09.08.1984, it appears that Land Reference Cases Nos. 229 to 257 of 1988 were filed before the Reference Court and in the said Reference Cases, the Reference Court had awarded the additional compensation at Rs. 8/- per sq. mtr. by assessing the market value of the land.

4. It deserves to be recorded that in the said decision of the Reference Court, the reliance was placed upon the valuation assessed by the Reference Court of Land Reference Cases Nos. 1076/92 to 1084/92 and 1088/92 to 1099/92 pertaining to the acquisition of the land situated at village Uchhad.

5. There is also no dispute on the point that the Award passed by the Reference Court in Land Reference Cases Nos. 229 to 257 of 1988 and

others for the land situated at village Kanjat were carried before this Court in the proceedings of First Appeal Nos. 3391 of 1999 and allied matters and this Court (Coram:M.R. Calla,J.) in its order dated 28.02.2000, below application for condonation of delay, found it proper not to condone the delay and the appeals were rejected. Neither side is in a position to show that the order dated 28.02.2000, passed by this Court (Coram:M.R. Calla,J.) in the aforesaid Civil Applications for condonation of delay in preferring the First Appeals were carried before the Higher Forum and on the contrary, as per the instructions of the orig. claimants-appellants herein, the decision is accepted and the amount is paid @ Rs.8/- per sq.mtr. as ordered by the Reference Court.

6. It deserves to be recorded that the order dated 28.02.2000, passed by this Court for the land of village Kanjat also came to be considered by the Division Bench of this Court in the proceedings of assessment of the market value for the land situated at village Abhol. The Division Bench of this Court in the said appeals which came to be decided on 22.07.2003 for village Abhol, by taking the base of the earlier decision for village Kanjat which is also the land of the very village under consideration, assessed the market value of

the land at Rs.16.25ps. per sq.mtr. and directed an amount of Rs.13/- per sq. mtr. for non-irrigated land in respect of the land at village Abhol in whose case, the Notification under Section 4 of the Act was published on 25.04.1989.

7. This Court had an occasion to consider both the aforesaid decision of the Single Bench as well as Division Bench of this Court for village Kanjat and Abhol respectively in First Appeal Nos. 1941 of 1997 to 1955 of 1997 for the land situated at village Abhol in respect of which the Notification under Section 4 of the Act was published on 08.09.1983. This Court in its decision dated 09.04.2007 in the aforesaid First Appeals observed as under:

> “8. On the aspects of valuation of the land under the acquisition, as assessed by the Reference Court and its confirmation thereof by the Division Bench to that extent, it appears that there is no dispute that the decision of the Division Bench in the proceedings of First Appeal No.1330 of 2003 was pertaining to similar land of the very village Abhol. The Notification under Section 4 of the Act in the case before the Division Bench was dated 25.01.1989 and it is also not in dispute that the Division Bench in the said decision found that Rs. 1300/- per Area (Rs.13/- per sq.mtr.) was the market value of the land in the year 1989 and 25% increase for irrigated land was given and therefore, the Division Bench found the market value for irrigated land @ Rs. 1625/- per Are (Rs. 16.25 ps per sq. mtr.). Therefore, it appears that as

per the view taken by the Division Bench of this Court in the above referred decision for village Abhol for acquisition pursuant to the Notification under Section 4 of the Act dated 25.01.1989, Rs.13.00 per sq. mtr. was found as market value for non-irrigated land and Rs.16.25 per sq. mtr. was found as market value for irrigated land for village Abhol.

9. It is by now well settled that for arriving at the market value based on the sale instances or based on the price fixed and confirmed by the higher forum, 10% appreciation per year in the market value can be considered. In the same manner for the present case, the reduction in valuation can be considered @ 10% per year from the Notification dated 25.01.1989 to 08.09.1983.

10. Mr. Thakkar, learned counsel appearing for the claimant also conceded before the Court that if 10% reduction is considered as per the settled legal position, then the the claimants are agreeable with the prices fixed by the Division Bench of this Court in respect of the very village as per the above referred decision.

11. Even otherwise also, the principles of application of 10% appreciation can equally apply in the reverse direction for reduction, if the Court is to fix the market value of the land during the earlier period, subject to any other cogent and reliable evidence to the contrary. There is no other evidence on record and the reason being that the sale instances which were produced by the claimant before the Reference Court were only extract of the index and neither the purchaser nor the vendor were examined. Not only that, but the said sale instances upon which the reliance was placed before the Reference Court was pertaining to the land situated

in different village and not the very village Abhol.

12. Under these circumstances, the reduction of 10% per year in the market value can be reasonably considered by this Court in the present case. If the period is counted between 25.01.1989 to 08.09.1983 in the reverse direction, roughly, there was a gap of 5½ years and therefore, the market value of the land deserves to be reduced than the market value fixed on 25.01.1989 by 55%, taking 10% ever year reduction in the reverse direction for the earlier period. Same principle can be applied for irrigated as well as non-irrigated land.

13. As a result thereof, if out of the amount of Rs.13/- per sq. mtr., reduction of 55% equivalent to Rs.7.15ps. per sq.mtr. is excluded, the net valuation would come to Rs.5.85Ps. per sq. mtr. for non-irrigated land. Similarly, if out of Rs.16.25Ps. per sq. mtr., 55% equivalent to Rs.8.93Ps. is excluded, the value would come to Rs.7.32Ps. per sq. mtr. on the date when the notification under Section 4 was published on 08.09.1983. Therefore, it appears that the market value of the non-irrigated land was Rs.5.85Ps. per sq.mtr. and Rs.7.32Ps. per sq.mtr. and the rounded figure would be Rs.7.30Ps. per sq. mtr. for irrigated land. As against the said market value of the non-irrigated and irrigated land, the Land Acquisition Officer has assessed the value of the land at the rate of Rs.0.85Ps. per sq. mtr. for non-irrigated land. If the amount already paid as per the Award of the Land Acquisition Officer is excluded based on the aforesaid market value, it appears that the appellant would be entitled to the compensation @ Rs.5/- per sq. mtr. for the non-irrigated land and Rs.6/- per sq. mtr. for irrigated land.

14. It may be that while hearing the First Appeal, if the Reference Court has not properly considered certain material or documents on record, and if this Court finds it necessary, it may exercise the judicial discretion for remanding the matter to the Reference Court. However, if the record can be re-appreciated and the decision can be rendered by the Appellate Court, normally, the exercise of the discretion for remand may not be required. Further, it is true that the development of the subsequent order of the Reference Court in respect to the land situated in the very village based on the notification of the year 1989, its confirmation thereof by this Court, are of later date, but they are pending the present First Appeals before this Court. It also appears that acquisition is of the year 1983, the references are of the year 1988, the decision of the Reference Court is of the year 1996, and the appeals are of the year 1997, and therefore, roughly about 19 years time has passed even after the Reference. Therefore, it would be just and proper not to exercise the discretion for remand of the matter, but to decide the appeal after re-appreciation of the evidence and the material available on record so as to put an end to the litigation by curtailing the delay. It may also be recorded that the learned Advocate appearing for both the sides have also contended that it may not be necessary for this Court to remand the matter and the Court may fix the valuation as it may find it proper, considering the facts and circumstances of the case.

15. In view of the above observations and discussions, it is hereby observed and directed that the appellant/orig. Claimant/land owner would be entitled to the additional compensation towards the market value of the land @ Rs.5/- per sq. mtr. for

non-irrigated land and Rs.6/- per sq. mtr. for irrigated land.“

8. Therefore, for the land situated at village Abhol, in respect of which the notification under Section 4 of the Act was published on 08.09.1983, for non-irrigated land the additional compensation was found as proper @ Rs.5/-per sq. mtr. and at Rs.6/- per sq. mtr. for irrigated land.

9. It is an admitted position that the notification in the present case under Section 4 of the Act was published on 09.08.1984. Therefore, roughly there is a gap of about one year in comparison to the notification dated 08.09.1983 for village Abhol. The land of village Kanjat is situated in the proximity area of village Abhol and the boundary of each villages are touching to one another. Therefore, the valuation assessed by this Court for the land of village Abhol can be taken as the base for assessment for the purpose of assessment of the market value for the land at village Kanjat.

10. Mr. Thakkar, learned counsel appearing for the appellants also declared before the Court that if the assessment is made of the market value taking the base of village Abhol, as concluded by this Court on 09.04.2007 in the proceedings of First Appeal Nos. 1941 of 1997 and allied

matters, the appellants are ready to accept the said amount and they are also ready to restrict the claim for additional compensation.

11. If valuation for the land of village Abhol, as referred to hereinabove in respect of the Notification under Section 4 of the Act dated 08.09.1983 is taken as the base, and the increase in the valuation of 10% per year is considered by way of appreciation, the net effect would be that for irrigated land, the additional compensation which was required to be considered by the Reference Court was @ Rs.5.50 Ps. per sq. mtr. for non-irrigated land and Rs.6.60 Ps. for irrigated land. As against the same, the Reference Court has ordered the additional compensation @ Rs.1.75 Ps. per sq.mtr., both for irrigated and non-irrigated land. Therefore, it would be just and proper to order for additional compensation @ Rs. 3.75 per sq.mtr. for non-irrigated land and Rs.4.85ps. for irrigated land.

12. In view of the aforesaid observations and discussions, it is hereby observed and directed that the appellants/orig. claimants/land owners would be entitled to an additional compensation towards market value of the land @ Rs. 3.75 Ps. for non-irrigated

land and Rs.4.85Ps. for irrigated land in addition to the amount of additional compensation as ordered by the Reference Court.

13. The other consequential benefits of additional amount of 12% under Section 23(1-A), the solatium @ 30% as per Section 23(2) of the Act and the interest @9% for the first year and 15% for the subsequent year on the additional amount of compensation, including the solatium and increase under Section 23(1-A) of the Act from the date of taking over of the possession, until the amount is deposited and/or whichever is earlier, would be the additional proportionate amount to which the appellants would be entitled, since the same are even otherwise as per the statutory scheme of the Land Acquisition Act, and such were also ordered by the Reference Court on the additional amount of compensation @ Rs. 1.75 Ps. per sq.mtr. appellants shall also be entitled to the cost in proportion to the additional amount, as ordered by this Court in the present Appeals. Hence also, ordered accordingly.

14. Appeals are partly allowed to the aforesaid extent. Decree accordingly.

(JAYANT PATEL, J.)

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